

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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Amendment of Section 73.622(b)
Table of Allotments,
Digital Television Broadcast Stations.
(Salt Lake City, Ogden and Provo, Utah)

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MM Docket No. 99-197
RM-9573

To: Chief, Video Service Division
Mass Media Bureau

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COMMUNICATIONS COMMISSION
THE SECRETARY

REPLY COMMENTS OF DTV UTAH

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SUMMARY

DTV Utah submits these Reply Comments to address arguments made by four commenters in response to the Commission's Notice of Proposed Rule Making ("Notice") in this proceeding. These commenters have provided no sound legal or public interest basis for derailing the implementation of the DTV Utah joint tower project – a project that the Commission has noted will permit eight full power stations to operate their digital facilities from a single, optimized transmitting tower, benefiting the public and launching Utah into the digital era. DTV Utah strongly supports the Commission's proposed amendments to the DTV Table of Allotments ("DTV Table") and urges prompt action.

The proposed amendments to the DTV Table set forth in the Notice are in full compliance with the Commission's requirements and are essential to the success of the joint tower project. Consistent with the Commission's urging of cooperation among broadcasters, the DTV Utah stations have devoted tremendous resources to the joint tower project, including extensive coordination efforts to ensure that all of Utah's LPTVs and translators will be able to continue providing service once the proposed channel amendments are adopted. As the Commission has recognized, a host of public interest benefits will flow from the success of this cooperative endeavor.

Two of the commenters urge the Commission to disrupt the carefully balanced, interdependent DTV Utah channel plan in favor of requested amendments to the analog TV Table of Allotments. Unlike the DTV Utah proposal, the Commission has not even made a preliminary determination that these proposals would serve the public interest and retains its discretion either to move forward with the proposals in due course or to dismiss them outright,

without initiating a rulemaking proceeding. In any event, there are alternative means available to permit these commenters to serve their specified communities without disruption or delay to DTV Utah's eight station digital joint tower project. The public interest strongly favors adoption of the channel changes proposed in the Notice. The Commission should grant the proposed amendments to the DTV Table set forth in the Notice without delay.

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To: Chief, Video Service Division
Mass Media Bureau

REPLY COMMENTS OF DTV UTAH

DTV Utah¹ hereby submits these Reply Comments to address comments filed in response to the Notice of Proposed Rule Making ("Notice")² issued by the Commission in the above-captioned proceeding in connection with the Petition for Rulemaking ("Petition") filed by DTV Utah on March 12, 1999.³ The Notice proposes to amend Section 73.622(b) of the FCC's Rules, the DTV Table of Allotments ("DTV Table"), to allot Channel *44 to Provo, Utah and assign it as the reserved noncommercial educational ("NCE") DTV channel for KBYU-TV; to

¹ DTV Utah is comprised of eight television stations in the Utah market (collectively "DTV Utah" or "Petitioners"). The licensees of these eight stations are Brigham Young University (licensee of NCE Station KBYU-TV); Larry H. Miller Communications Corp. (licensee of Station KJZZ-TV); Bonneville Holding Company (licensee of Station KSL-TV); United Television, Inc. (licensee of Station KTVX); University of Utah (licensee of NCE Stations KUED and KULC); KUTV Associates (licensee of Station KUTV); and ACME Television Licenses of Utah, LLC (proposed licensee of Station KUWB).

² Notice of Proposed Rule Making, MM Docket No. 99-197, RM-9573 (adopted May 19, 1999; rel. May 21, 1999). An Erratum was released by the FCC on May 26, 1999, to correct a typographical error in the Notice. *See* Erratum, MM Docket No. 99-197, RM-9573 (rel. May 26, 1999). The Notice of Proposed Rule Making and the Erratum collectively are referred to herein as the "Notice."

³ DTV Utah filed a Correction to the Petition on March 26, 1999, to remedy slight inaccuracies in the joint tower site coordinates and antenna heights in the Petition and its Exhibits. Any references herein to the "Petition" incorporate the Correction.

allot Channel 46 to Salt Lake City, Utah and assign it as the DTV channel for KJZZ-TV; to allot Channel *36 to Ogden, Utah and assign it as the reserved NCE DTV channel for KULC; and to allot Channel 48 to Ogden, Utah and assign it as the DTV channel for KUWB.⁴ Despite DTV Utah's careful planning and coordination with other Utah broadcasters and the Commission, four parties submitted comments objecting to certain aspects of the proposal developed by DTV Utah and proposed in the Notice.⁵ As shown below, none of these comments provides a sound legal or public interest basis for denying or delaying adoption of the amendments to the DTV Table proposed in the Notice – each of which amendments is critical to the successful implementation of the DTV Utah joint tower plan and the prompt initiation of DTV service in the Salt Lake City area.

I. THE PROPOSED AMENDMENTS TO THE DTV TABLE SERVE THE PUBLIC INTEREST, COMPLY WITH FCC REQUIREMENTS, AND ARE ESSENTIAL TO THE SUCCESS OF THE DTV UTAH JOINT TOWER PROJECT.

A. The Proposed Amendments Serve the Public Interest and Congress' and the Commission's Goal of Advancing the DTV Transition.

The amendments to the DTV Table proposed in the Notice would advance the goals of the DTV transition and serve the public interest in a myriad of ways. As set forth in detail in the Petition, these amendments are needed to enable DTV Utah to construct a single DTV tower, from which all eight DTV Utah stations will operate. This cooperative joint tower project will speed the initiation of digital services by these stations and will produce economies

⁴ The DTV Table would be amended as set forth in the Notice. See Erratum, MM Docket No. 99-197, RM-9573, correcting paragraph 5 of the Notice.

⁵ Comments to the Notice were filed by DTV Utah ("DTV Utah Comments"), Tooele 36, LLC ("Tooele 36 Comments"), Utah Communications, LLC ("Utah Communications Comments"), Telemundo of Northern California License Corporation, and AirWaves, Inc.

and efficiencies that will reduce the burden of the DTV transition on all of the stations involved, including the three non-commercial stations.⁶ The DTV Utah stations have made a tremendous investment in the joint tower project, coming together to engage in just the sort of cooperative arrangement that the Commission has found will "ensur[e] for the public the best use of the digital spectrum, including not only the most efficient use of the spectrum but also the greatest array of valuable services."⁷

At the same time, DTV Utah has engaged in extensive efforts with the LPTV and translator communities to ensure that the proposed amendments to the DTV Table will not unduly disrupt LPTV and translator services in the area. DTV Utah's efforts in this regard have extended well beyond ensuring that there is no net impact on these secondary services. Over the past several months, DTV Utah has worked with the LPTV and translator communities to develop a plan – designed around the DTV Utah channel plan – that would preserve every LPTV and translator in the State. This endeavor has required an investment not only by DTV Utah, but by the licensees of these secondary services who have cooperated in the development of a

⁶ In the Notice, the Commission noted that the proposed channel changes "could enable the [DTV Utah] broadcasters to share facilities, costs and equipment in converting to the DTV technology." Notice at ¶ 3.

⁷ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcasting Service*, Fifth Report and Order, MM Docket No. 87-268, FCC 97-116, 12 FCC Rcd. 12809, 12834 (adopted Apr. 3, 1997). See also *Additional Application Processing Guidelines for Digital Television (DTV)*, Public Notice (August 10, 1998) at 11 ("[T]he Commission will seek to accommodate petitions to amend the DTV Table to modify allotments based on negotiated agreements that cannot be handled in the application process; that is, involving channels not allotted to any of the parties to the agreement. Once the table is amended through the allocation process to reflect an agreement, applications for the allotments would not be subject to the filing of competing applications.").

channel plan that will permit full power and secondary television services to coexist during the transition.

DTV Utah has made every effort to ensure that the public interest benefits of its joint tower proposal can be realized and the DTV transition advanced, while mitigating any adverse impact on other parties. As DTV Utah repeatedly has emphasized, the adjustments to the DTV Table proposed in the Notice are essential to the joint tower plan because they resolve potential interference problems and engineering obstacles that otherwise would preclude co-location of these eight stations on a single tower. Use of the DTV Utah stations' existing channel assignments at the joint tower site would create interference problems among the DTV Utah stations and with other stations in the Utah market, would disrupt the extensive steps taken to preserve secondary services in Utah, and would create a host of other technical problems.

DTV Utah emphasizes that any *delay* in adopting the proposed changes to the DTV Table also would jeopardize the progress of the DTV Utah project. Expeditious action to adopt the proposal set forth in the Notice is critical to *all* of the DTV Utah stations as they embark upon the DTV transition, not just for those whose allotments/assignments are directly addressed in the Notice. The DTV Utah stations need certainty with respect to their channel assignments as they face the Commission's aggressive application and transition deadlines, confront the harsh weather conditions that leave only a narrow window for tower construction each year, and strive to lead the DTV transition (*e.g.*, by covering the Salt Lake Winter Olympics).

Commenters in this proceeding have advanced no legal or public policy argument which would justify derailment of the DTV Utah joint tower project and loss of the public interest benefits flowing therefrom. The Commission should take swift action to reject the

arguments presented by commenters who oppose the amendments to the DTV Table proposed in the Notice. Such quick and decisive Commission action will permit the DTV Utah joint tower project to proceed aggressively, serving the public interest and setting an example for other markets as they transition to digital television services.

B. The Amendments to the DTV Table Proposed in the Notice Are in Full Compliance with the Commission's Rules for Amending the DTV Allotments/Assignments of Existing Stations, and Should Be Granted Without Delay.

The channel changes requested by DTV Utah and proposed by the Commission in the Notice meet the Commission's criteria for amending the DTV Table, and should be granted. Section 73.623(c) of the Commission's Rules sets forth the showings required for petitions requesting modification of DTV allotments/assignments included in the initial DTV Table.⁸ Specifically, petitioners must demonstrate that any proposed change to the DTV Table will permit the station at issue to meet the Commission's principal community requirements, and will not cause another *existing* station to experience more than a *de minimis* level of interference. Interference protection is afforded to existing licensees only, not petitioners seeking to have new allotments added to the DTV Table or analog TV Table of Allotments ("TV Table").⁹

As found by the Commission in the Notice,¹⁰ the DTV channels sought by DTV Utah (Channels *36, *44, 46, 48) can be substituted for the stations' existing channels (Channels

⁸ 47 CFR § 73.623(c).

⁹ The TV Table of Allotments, which sets forth the channel allotment scheme for the NTSC television service, is set forth in Section 73.606(b) of the Commission's Rules. *See* 47 CFR § 73.606(b).

¹⁰ *See* Notice at ¶ 4.

17,¹¹ 27, *35,¹² *39), allotted to the communities specified above, and assigned to the existing licensees in compliance with Sections 73.623 (DTV Applications and Changes to DTV Allotments) and 73.625(a) (DTV Coverage of Principal Community and Antenna System: Transmitter Location) of the Commission's Rules.¹³ The amendments to the DTV Table proposed in the Notice will not result in harmful interference to the NTSC or DTV operations of other full power stations in the Utah market,¹⁴ nor will it unduly disrupt LPTV or translator service in the area. Therefore, the proposal meets the Commission's requirements for amending existing DTV Allotments, and promptly should be granted.

II. TOOELE 36'S ELEVENTH HOUR PROPOSAL TO AMEND THE TV TABLE OF ALLOTMENTS IS NOT ENTITLED TO PROTECTION AND SHOULD NOT BE PERMITTED TO DELAY OR IMPEDE THE DTV UTAH JOINT TOWER PROJECT.

In its comments, Tooele 36, LLC ("Tooele 36") objects to the proposed allotment/assignment of Channel *36 to noncommercial station KULC in Ogden because it would conflict with Tooele 36's pending petition for rulemaking to amend the TV Table to add a

¹¹ The FCC initially allotted/assigned DTV Channel 29 to KUWB. Through a private swapping arrangement, KUWB agreed to swap its Channel 29 DTV allotment/assignment for the Channel 17 DTV allotment/assignment of KUPX (NTSC 16, Provo, UT).

¹² The FCC initially allotted/assigned DTV Channel *34 to KULC. Through a private swapping arrangement, KULC has agreed to swap its Channel *34 DTV allotment/assignment for KUTV's Channel 35 DTV allotment/assignment, resulting in the following channel pairings: KULC (NTSC *9, DTV *35) and KUTV (NTSC 2, DTV 34). The purpose of this swap is to permit KUTV to conduct its DTV operations on Channel 34, as specified in the DTV Utah channel plan, and to permit KULC to relinquish the Channel *35 allotment/assignment in exchange for Channel *36, which would be added to the FCC's DTV Table. Obviously, failure to allot and assign Channel *36 as proposed in the Notice will disrupt this swapping arrangement and the planned service of KUTV on Channel 34.

¹³ 47 CFR §§ 73.623, 73.625(a). *See also* DTV Utah Comments at Exhibit A (Engineering Statement).

¹⁴ *See* DTV Utah Comments at Exhibit A.

new Channel 36 allotment in Tooele, Utah. Tooele 36 argues that because its petition was filed two days before the final deadline for submitting petitions to add new allotments to the TV Table, its request for Channel 36 is entitled to "protection." Tooele 36 asserts that the Commission should remove Channel *36 from the DTV Utah channel plan and either require KULC to commence DTV service on its original Channel *34 allotment/assignment or allot/assign another DTV channel to KULC.¹⁵ The assertions set forth in Tooele 36's comments are factually and legally inaccurate, and should be dismissed.

As explained in detail in the Petition, the channel changes requested by DTV Utah and proposed in the Notice are one component of a carefully balanced, interdependent channel plan designed to permit eight full-power stations to operate their digital facilities from a single tower. Negotiations and coordination with secondary services have been based on this channel plan. As demonstrated in the Petition, any alteration in the DTV Utah channel plan would disrupt this complex, interdependent system and jeopardize the entire joint tower project. Tooele 36 misunderstands the DTV Utah proposal when it asserts that Channel 34 could be used in lieu of Channel 36. The DTV Utah plan contemplates use of both Channels 34 and 36, with the return on Channel 35 to the pool of unused channels. The other channels that Tooele 36 proposes will not permit DTV Utah to move forward with its optimized eight station joint tower project, each component of which is critical to the success of the whole.

¹⁵ Tooele 36 mistakenly interprets the DTV Utah proposal as involving the relinquishment of Channel 34 in exchange for Channel 36. Rather, as explained in the Commission's Notice and its subsequent Erratum, DTV Utah would relinquish Channel 35 in exchange for Channel 36, and would retain *both* Channels 34 and 36.

Moreover, Tooele 36's claim that its request for Channel 36 is entitled to "protection" and must be considered in connection with the present rulemaking is legally unsound. In the Sixth Report & Order in the DTV Proceeding ("Sixth R&O"), the Commission explained that in developing the initial DTV Table, it had decided to "avoid creating DTV allotments that would conflict with proposed new NTSC allotments."¹⁶ The Commission stated that the reason for this decision was to "ensure that parties who have already begun to invest in new stations, including those planning noncommercial stations, may continue to pursue their ongoing station development projects."¹⁷ At the same time, however, the Commission recognized that some changes to the DTV Table would be appropriate, particularly in instances where broadcasters in a region come together to develop a cooperative strategy for implementing DTV. Thus, the Commission set forth procedures for amending initial DTV allotments/assignments – procedures which do not include protection of pending rulemaking petitions.

The Commission's decision to "protect" pending requests for new NTSC allotments in the initial TV Table does not require the Commission to act favorably upon or protect Tooele 36's pending petition. It is not, as Tooele 36 contends, "protection promised by the Commission."¹⁸ The Commission at no time committed itself to avoid conflicts to pending NTSC allotment requests in its future actions with respect to the DTV Table. As noted above,

¹⁶ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcasting Service*, Sixth Report and Order, MM Docket No. 87-268, FCC 97-115, 12 FCC Rcd. 14588, 14639 (adopted Apr. 3, 1997) ("Sixth R&O").

¹⁷ *Id.*

¹⁸ Tooele 36 Comments at ¶ 4.

the Commission's criteria for amending initial allotments/assignments in the DTV Table *do not* require consideration of pending rulemaking petitions. While the Commission did decide in the first instance to avoid conflicting DTV allotments in the initial DTV Table, the Commission did not condition changes to the DTV Table on protection of pending petitions for new NTSC allotments. Rather, it set forth specific technical and interference criteria relating to *existing* DTV and NTSC stations. Protection of pending NTSC rulemaking petitions *was not* a criterion for proposals by existing licensees to amend the DTV Table.¹⁹

Nor is Tooele 36's petition entitled to consideration alongside the pending DTV Utah proposal. The DTV Utah stations are existing licensees with paired NTSC and DTV channels who have sought amendment of their initial DTV allotments/assignments, in compliance with FCC Rules, to facilitate the Congress and FCC-mandated transition to DTV. The Commission already has made a preliminary determination that the DTV Utah proposal would serve the public interest and found that it warrants initiation of a rulemaking proceeding. By contrast, Tooele 36 is a mere petitioner who, by its own admission, "has neither vested interest in nor claim to Channel 36 (as opposed to any other specific channel that would bring first service to Tooele)." Throughout the DTV proceeding, the Commission repeatedly emphasized the public's stake in preserving the existing television service and successfully transitioning existing stations into the digital age. In the Sixth R&O, the Commission reiterated this point, stating: "[W]e believe that new television broadcast stations should operate with the

¹⁹ See 47 CFR § 73.623; Sixth R&O at 14688; *Advanced Television Systems and Their Impact upon the Existing Television Broadcasting Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, MM Docket No. 87-268, FCC 98-24, 13 FCC Rcd. 7418, 7482 (adopted Feb. 17, 1998) ("Sixth MO&O").

new DTV technology. In this regard, the licensing of new NTSC stations will come to an end as provided in the *Sixth Further Notice*.²⁰ The Commission later summarized this policy when it declined on reconsideration to "adopt[] rules to place limits or caps on DTV operations in cases where the DTV Table predicts interference to NTSC service or where an NTSC licensee objects to new interference."²¹ The Commission simply stated: "Our goal in this proceeding is to provide for the transition to DTV service so that the benefits of this new technology can be brought to the American people in an expeditious and efficient manner. To handicap the provision of this new service by placing caps on DTV transmissions or otherwise limiting the provision of DTV service would thwart this goal."²²

Although the Commission chose to avoid initial DTV allotments/assignments that conflicted with pending petitions to amend the TV Table, it retained its preexisting discretion to ultimately take whatever action it deemed appropriate and in the public interest with respect to such petitions, including dismissal of the petitions without issuance of a notice of proposed rulemaking pursuant to Section 1.407 of the FCC Rules.²³ All such rulemaking petitions, including Tooele 36's petition, are subject to consideration on a case-by-case basis. Indeed the Commission might, wholly apart from the conflict with the DTV Utah rulemaking, determine

²⁰ Sixth R&O at 14639. We note that were Tooele 36 seeking to provide DTV service to Tooele, as encouraged by the Commission, a number of new allotments could be made available for that purpose. DTV Utah emphasizes that these alternative DTV allotments *would not* be technically feasible for assignment to the DTV Utah stations, due to the particular constraints imposed by the optimized joint tower design, as described in the Petition.

²¹ Sixth MO&O at 7478.

²² *Id.*

²³ See 47 CFR § 1.407.

that the public interest does not demand the addition of a new NTSC allotment to Tooele, Utah – a community that currently enjoys analog service from some nine stations²⁴ and will enjoy DTV service from at least 10 stations, including all eight DTV Utah stations from the joint tower site.²⁵

In the event that the Commission determines that a new NTSC allotment should be added to Tooele, a review of the available channels below channel 60 indicates that there are other channels in the Tooele area that would meet the geographical spacing criteria for new NTSC allotments. Allotment of one of these alternative channels to Tooele could permit the addition of a new station in Tooele without disruption of the carefully balanced DTV Utah joint tower project, and therefore would be preferable to Tooele 36's proposed channel 36 allotment.

The public interest favors granting the proposed amendments to the DTV Table set forth in the Notice without delay. If the Commission determines that Tooele 36's petition to add a new NTSC allotment to Tooele warrants consideration (rather than outright dismissal), it is free to address this proposal in due course and, if appropriate, allot a different NTSC channel to Tooele. In no event should this matter be permitted to jeopardize or delay the public interest benefits of the DTV Utah proposal.

²⁴ Tooele currently receives an over-the-air signal from stations KTVX (ABC), KSL-TV (NBC), KSTU (FOX), KJZZ-TV (UPN), KUWB (WBN), and KAZG, and by translators from noncommercial stations KUED, KULC and KBYU-TV. New station KTMW (Channel 20, Salt Lake City) also will provide over-the-air analog service to Tooele.

²⁵ In addition to the DTV Utah stations, Tooele will receive over-the-air DTV service from KUPX (PAX) and KSTU (FOX). The number of stations providing over-the-air DTV service to Tooele will grow to twelve when KAZG and KTMW commence DTV operations.

III. THE CHANNEL 49 PROPOSAL OF UTAH COMMUNICATIONS IS NOT ENTITLED TO CONSIDERATION IN THIS PROCEEDING.

Like Tooele 36, Utah Communications, LLC ("Utah Communications") cites the Commission's statement in the Sixth R&O that it will "avoid creating DTV allotments that would conflict with proposed new NTSC allotments"²⁶ as support for its claim that the Commission must give side-by-side consideration of its proposal with DTV Utah's proposal. The Commission's statement did not apply to Utah Communications' Channel 49 proposal, however. Rather, the "pending petitions for rule making requesting new allotments" referenced by the Commission in that paragraph of the Sixth R&O were rulemaking petitions that were filed on or before July 25, 1996 – the last date on which the Commission would accept petitions for rulemaking proposing to amend the TV Table to add an allotment for a new NTSC station.²⁷ The Commission did not refer to petitions filed after that date or petitions to substitute a new NTSC allotment for an existing one – such as Utah Communications' July 1998 "Supplement" asking the Commission to allot Channel 49 to Ogden, Utah for NTSC service (in place of the existing Channel 24 allotment, for which Utah Communications' then held a construction permit). Indeed, Utah Communications' request for Channel 49 was filed *more than fifteen months after* the Sixth R&O was adopted. Thus, the "protection" the Commission referenced in the Sixth R&O did not apply to Utah Communications' request for Channel 49. Nor did it apply to Utah Communications' original proposal to substitute Channel 42 for Channel 24 in the TV Table, as

²⁶ Sixth R&O at 14639.

²⁷ *Id.* at 14635-36.

is evidenced by the Commission's decision on reconsideration to allot/assign Channel 42 as the DTV channel for KUED in Salt Lake City.²⁸

Utah Communications' station, KAZG(TV), already had a construction permit for an NTSC station on Channel 24 in Ogden when it filed its July 1998 "Supplement" seeking to have Channel 49 allotted to Ogden in place of Channel 24. On January 26, 1999, Utah Communications filed an application for license to cover KAZG's Channel 24 facility, and this application was accepted for filing on March 3, 1999. Thus, Utah Communications already has a fully-spaced, protected and constructed Channel 24 NTSC facility in Ogden.

Moreover, Utah Communications has not even asserted that it will be unable to successfully operate its station at KAZG's current site. Rather, it simply asserts that the station will experience a "reception deficiency" as compared with other local stations, which would "place[] the station at a disadvantage."²⁹ Utah Communications' preference for Channel 49 over its authorized and constructed Channel 24 facility hardly rises to the level of a public interest benefit that would warrant disruption of the eight-station digital joint tower project at stake in the instant rulemaking proceeding. KAZG already has brought new NTSC service to Ogden on Channel 24, and its mere preference for a different channel should not be permitted to thwart the investment that DTV Utah, the Commission and others have made in bringing digital service to Utah's public.³⁰

²⁸ See Sixth MO&O, Appendix B at B-36.

²⁹ Utah Communications Comments at 2; Supplement to Petition for Rulemaking of Utah Communications, Engineering Statement at 2 (filed July 24, 1998).

³⁰ The Commission has always maintained that any such proposals must be considered in light of any impact on DTV allotments.

Finally, there is no basis for the claim that DTV Utah's proposal must be deemed a "counterproposal" to Utah Communications' request for Channel 49. The Commission's Rules contemplate that counterproposals will be accepted or considered by the Commission after issuance of a notice of proposed rulemaking with respect to the primary proposal the Commission has determined warrants consideration.³¹ No notice of proposed rulemaking ever was issued in response to Utah Communications' petition; indeed, the Commission may determine that the proposal should be dismissed outright. In short, the Commission's determination that it would continue to accept "other petitions to amend the TV Table of Allotments", such as proposals to alter the channel on which an existing station operates,³² does not presuppose favorable resolution of such petitions, nor does it require the Commission to consider such petitions alongside petitions to amend the DTV Table filed by existing licensees seeking to successfully navigate the DTV transition.

IV. DTV UTAH IS WORKING TO RESOLVE THE ISSUES RAISED IN THE COMMENTS FILED BY TELEMUNDO AND AIRWAVES WHICH, IN ANY EVENT, WOULD NOT WARRANT DISRUPTION OF THE DTV UTAH PROPOSAL.

Telemundo of Northern California License Corporation ("Telemundo"), licensee of LPTV station KEJT-LP (Channel 48, Salt Lake City, Utah) and AirWaves, Inc. ("AirWaves"), licensee of KTLE-LP in Ogden, Utah, filed comments in this proceeding arguing that the Commission should not adopt the channel changes proposed in the Notice until KEJT-LP and KBYU-TV's translator station K50EJ resolve an outstanding dispute over the specific terms of a

³¹ See 47 CFR 1.420(d).

³² Sixth R&O at 14636.

consent letter to accommodate these secondary stations' participation in the master channel plan for LPTVs and translators. This master plan was designed around the DTV Utah proposal and developed in cooperation with Kent Parsons, Vice President of the National Translator Association, and the Society of Broadcast Engineers (Chapter 62). The master plan would preserve *all* of the LPTV and translator service in Utah.³³ KBYU-TV and DTV Utah are working to address the concerns raised by Telemundo and AirWaves, and anticipate that the dispute regarding the consent letter will be resolved and that such resolution will result in the withdrawal of the Telemundo and AirWaves comments. In any event, under the principle that secondary services must yield to DTV main stations and in light of the overwhelming success of DTV Utah's efforts to coordinate with secondary services, the pendency of this dispute should not call into question or delay in the slightest grant of the amendments proposed in the Notice. As explained above and in prior pleadings to this proceeding, DTV Utah has worked for months to mitigate the impact of its joint tower project on LPTVs and translators. Its tremendous investment of time and resources has resulted in a channel plan that will preserve all LPTV and translator service in the Salt Lake City, Utah area.

V. CONCLUSION

For the foregoing reasons, DTV Utah hereby respectfully urges the Commission to reject the arguments advanced in opposition to the amendments to the DTV Table proposed in the Notice and *without delay* amend Section 73.622(b), the DTV Table of Allotments, to substitute Channel *44 for Channel *39 as the DTV channel assigned to KBYU-TV; to substitute

³³ The development of this plan was a Herculean task. There are some 622 translators and at least 15 LPTVs in Utah.

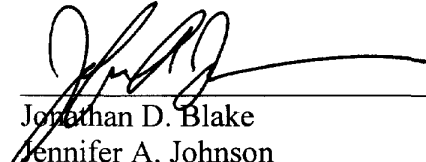
Channel 46 for Channel 27 as the DTV channel assigned to KJZZ-TV; to substitute Channel *36 for Channel *35 as the DTV channel assigned to KULC; and to substitute Channel 48 for Channel 17 as the DTV channel to be assigned to KUWB. Swift and favorable action to adopt the proposed amendments to the DTV Table is mandated by the public interest and the congressional and Commission policy of promoting the DTV transition, and is firmly rooted in the law.

Respectfully submitted,

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July 27, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 1999 a copy of the foregoing Reply Comments of DTV Utah was served via first-class mail, postage prepaid on the following:

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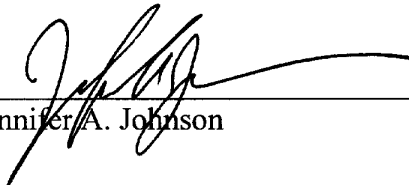
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